

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

PREAMBLE

1. **Sections Affected**

Article 5	Rulemaking Action
R7-3-501	New Article
R7-3-502	New Section
R7-3-503	New Section
R7-3-504	New Section
R7-3-505	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 15-1852(C)
Implementing statute: A.R.S. § 15-1873 et seq.
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Verna Allen, Executive Director
Address: 2020 North Central Avenue, Suite 275
Phoenix, Arizona 85004
Telephone: (602) 229-2595
Fax: (602) 229-2599
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

R7-3-501 through R7-3-505 will provide procedures for implementing the Arizona Family College Savings Program through financial institutions as a public-private partnership. These rules will establish a uniform and consistent manner in implementing the Arizona Family College Savings Program.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**
 - A. **An identification of the proposed rulemaking:** Arizona Family College Savings Plan, R7-3-501 through R7-3-505, adopted pursuant to A.R.S. § 15-1873 et seq.
 - B. **An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:** Persons directly affected are account holders, beneficiaries, and financial institutions. Account holders will bear costs in paying an application fee and a potential maintenance fee. Account holders will benefit from the Program as the interest is tax deferred and taxed at the income bracket of the beneficiary. Beneficiaries will directly benefit from the Program as having money available to attain a college education. Financial institutions will bear the cost of paying a marketing fee and will benefit by increasing the deposits into their financial institutions.
 - C. **An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking:** The Commission will bear administrative costs in keeping track of the information received from the financial institutions and enforcing the penalties for nonqualified withdrawals.

Arizona Administrative Register
Notices of Proposed Rulemaking

- D. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking: Financial institutions will bear the cost of paying a marketing fee. The Office of Administrative Hearings will hear any causes which involve an appeal from the Commission.
- E. A statement of the probable impact of the proposed rulemaking on small business: Some financial institutions are small businesses and will need to bear administrative costs in implementing and maintaining the Program.
- F. A statement of the probable effect on state revenues: Additional funding for the Commission will be needed to implement the program.
- G. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: Due to the nature of the various statutory requirements, less intrusive or less costly alternatives were not available.
7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Name: Verna Allen, Executive Director
Address: 2020 North Central Avenue, Suite 275
Phoenix, Arizona 85004
Telephone: (602) 229-2595
Fax: (602) 229-2599
8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:
Date: October 30, 1997
Time: 2 p.m.
Location: Commission for Postsecondary Education Office
2020 North Central Avenue, Suite 275
Phoenix, Arizona 85004
Nature: Oral Proceeding and Adoption of Rules
9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
10. Incorporation by reference and their location in the rules:
Not applicable.
11. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

Section

- R7-3-501. Definitions
R7-3-502. Fees
R7-3-503. RFP Process
R7-3-504. Set-up and Maintenance of Accounts - Reporting of Nonqualified Withdrawals; Penalties
R7-3-505. Oversight of Financial Institutions

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

R7-3-501. Definitions

- A. "Cash" means currency, bills, and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, pay-roll deposit, traveler's check, and wire transfer will be treated as cash.
- B. "Certification" means a signed, written statement by an account owner authorizing withdrawal for specific educational item or items or service or services. If the account

owner has a guardian, conservator, or another person appointed to manage the account owner's personal affairs, or an individual granted power of attorney, that individual shall have the power to sign the certification.

- C. "Commission" means the Commission for Postsecondary Education as defined in A.R.S. § 15-1871.
- D. "Committee" means the Family College Savings Program Oversight Committee as defined in A.R.S. § 15-1871.
- E. "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.

R7-3-502. Fees

A. Application fee

The application fee is \$10. Application fees shall be forwarded to the Commission at the end of the month in which the account is opened. A financial institution may waive the application fee but will nevertheless be responsible for tendering to the Commission \$10 for each new account opened; said tender to be made at the end of the month in which the account is opened. The Committee shall review the application fee every 24 months and recommend to the Commission whether the application fee should be adjusted.

B. Administrative fee

Arizona Administrative Register
Notices of Proposed Rulemaking

For each account opened, the financial institution shall pay to the Commission a 1-time fee of \$3 at the end of the month in which the account was opened. The Committee shall review the administrative fee every 24 months and recommend to the Commission whether the administrative fee should be adjusted. The financial institution shall not charge the account holder the administrative fee.

C. Marketing fee

The financial institution shall pay to the Commission an annual marketing fee. The marketing fee shall be paid at the beginning of each calendar year as a \$200 flat fee. If a financial institution begins participating in the Arizona Family College Savings Program after the beginning of a calendar year, the financial institution shall pay a prorated marketing fee based upon the month in which it begins participation in the Program regardless of the day in the month. The Committee shall review the marketing fee every 12 months and recommend to the Commission whether the marketing fee should be adjusted. The Commission may review the marketing fee prior to the committee's required 12-month review. The financial institution shall not charge the account holder the marketing fee.

R7-3-503. RFP Process

The Commission may require any and all information for participation, including the ability of the investment instruments to track estimated costs of higher education as calculated by the Commission.

R7-3-504 Set-up and Maintenance of Accounts - Reporting of Nonqualified Withdrawals; Penalties

- A.** Pursuant to A.R.S. §§ 15-1875(H), (I), and (J), the Commission has authority to assess penalties for nonqualified withdrawals. In order to make a withdrawal, the account holder or the account holder's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871. If a financial institution has reason to believe that a nonqualified withdrawal has been made, the financial institution shall report that fact to the Commission within 3 business days, in writing, including identification of the account holder, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be nonqualified. The financial institution may, but shall not be required to, notify the account holder and beneficiary of any such communication to the Commission.
- B.** If the Commission determines that a withdrawal is nonqualified, the Commission shall assess a 10% penalty on the amount of the nonqualified withdrawal. Within 3 business days, the Commission shall give written notification to the financial institution and the account holder that the withdrawal has been determined to be nonqualified and that a 10% penalty will be assessed. The account holder may dispute the Commission's determination by submitting written notice to the Commission within 30 days from the date of the notice. The Commission shall make a written determination

regarding the dispute within 30 days of the receipt of its notice from the account holder. If the account holder disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 et seq.

R7-3-505 Oversight of Financial Institutions

A. Disclaimer of state liability

Every document pertaining to the Family College Savings Program shall clearly indicate that "The account is not insured by this state and neither the principal deposited nor the investment return is guaranteed." A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the Family College Savings Program. This language may also be handwritten or typed, or provided by any other method to facilitate compliance.

B. Reporting Requirements

1. To account holders

Each calendar quarter, every financial institution shall provide each account holder with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest paid or dividends earned and any penalties charged, and an ending balance. Additionally, the statement for the 4th calendar quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid, an annual total of any penalties charged, and a year-end balance.

2. To Commission

A copy of the statement described in subsection (B)(1), above, shall be sent to the Commission. Additionally, each financial institution shall provide the Commission with the information required by A.R.S. § 15-1874(F).

C. Access to books and records

No contractor shall have access to the books and records of a financial institution or Program Manager unless the Commission or its designee 1st approves with or without modification such request for access.

D. Non-renewal

The Commission's failure to renew a contract with a financial institution shall not be construed as "good cause" as referred to in A.R.S. § 15-1874(I).

E. Marketing programs

- 1.** Any financial institution or group of financial institutions that wishes to engage in its own marketing program may do so provided that any proposed marketing program is 1st submitted to the Commission for review. If, within 30 days, the Commission does not notify the financial institution or group of financial institutions, in writing, that the proposed marketing program is rejected or requires modifications, the proposed marketing program shall be deemed approved.
- 2.** Any financial institution or group of financial institutions that chooses to engage in its own marketing program may petition the Commission for a credit against future marketing fees.

NOTICE OF PROPOSED RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

PREAMBLE

1. Sections Affected
R19-2-332
- Rulemaking Action
New Section
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: § 5-104(A)(2)
Implementing statutes: §§ 5-113(F) and 5-114(C) and (E)
3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Paul Ryneveld
Address: Arizona Department of Racing
3877 North 7th Street, Suite 201
Phoenix, Arizona 85014
Telephone: (602) 277-1704
Fax: (602) 277-1165
4. An explanation of the rule, including the agency's reasons for initiating the rule:
The rules will clarify procedures for certifying a greyhound Arizona Bred.
5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
None.
6. The preliminary summary of the economic, small business, and consumer impact:
None.
7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Name: Paul Ryneveld
Address: Arizona Department of Racing
3877 North 7th Street, Suite 201
Phoenix, Arizona 85014
Telephone: (602) 277-1704
Fax: (602) 277-1165
8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:
No oral proceedings are scheduled. Contact Paul Ryneveld in writing to request 1. At least 5 requests need to be submitted within the 30 days following publication of the proposed rulemaking in order to schedule an oral proceeding.
9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None.
10. Incorporations by reference and their location in the rules:
None.
11. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 3. GREYHOUND RACING

Section

R19-2-332 Certifying a Greyhound Arizona-bred

ARTICLE 3. GREYHOUND RACING

R19-2-332 Certifying a Greyhound Arizona-bred

- A. A Breeder shall be properly licensed pursuant to A.R.S. § 5-107.01(B) in order to certify an Arizona-bred greyhound.
- B. Within 10 days of whelping, the Breeder shall provide notice of whelping to the Department on a Department-approved form. This notice shall include the names of all owners or lessees of the Dam at the time of whelping who will be entitled to Breeders' Awards at a later date. The Breeder shall also provide a copy of the Breeding Acknowledgement Form returned to the Breeder by the National Greyhound Association (NGA).
- C. Within 90 days of whelping, the Breeder shall provide tattoo numbers of greyhounds from the litter to the Department on a Department-approved form.
- D. The Breeder shall apply for Arizona-bred certification by submitting to the Department the completed application form provided by the Department and a National Greyhound Association Individual Registration Application. The application shall include the names of all owners or lessees of the Dam at the time of whelping who shall be entitled to Breeders' Awards.
- E. The Breeder shall adhere to the following in order to remain eligible for Arizona Bred Certification:
 - 1. A greyhound must be present in Arizona for not less than 6 months of its 1st year.
 - 2. During the greyhound's 1st year, the Breeder shall notify the Department whenever the greyhound is removed from the state.
 - 3. The Department may conduct inspections at any time to ensure that greyhounds meet the residency requirement.

- E. The Breeder shall make the litter available for inspection by the representatives of the Department at any time. The Department representative shall conduct an inspection of the litter at a location licensed by the Department and designated on the form within 30 days of whelping. The Department representative may conduct additional inspections of the litter to verify tattoo numbers and ensure compliance with requirements of A.R.S. § 5-114(C).
- G. If the greyhound and its Breeder qualifies by meeting requirements set forth in subsections (A) through (E), the Department shall certify that the greyhound is Arizona bred and mail all necessary documents, including the National Greyhound Association Individual Registration Application form, to the NGA. A greyhound shall be considered Arizona bred when the Department certifies the application for Arizona-bred certification.
- H. If the Breeder is ineligible for Breeders' Awards, the Director shall send a letter to the applicant explaining the ineligibility.
- I. The Department shall retain a copy of the NGA registration certificate and mail the original to the registered Breeder.
- J. Denial. The Director may deny an application for Arizona-bred certification for any of the following:
 - 1. Failure of the Breeder to notify the Department of whelping as required by subsection (B).
 - 2. Failure to provide the greyhound tattoo numbers as required in subsection (C).
 - 3. Failure of the greyhound to meet residency requirements and the Breeder to meet the notification requirements of subsection (E).
 - 4. Material misstatement by the Breeder.
- K. Applications and notices made to the Department shall be considered as official in the event of a conflict of information between Department records and records of another organization.
- L. An applicant may appeal a decision of the Director by following requirements established in R19-2-322.